

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 8, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 09od-136

OAHU

Grant of Two (2) Term, Non-Exclusive Easement to Brian W. Vinson for Seawall
Purposes, Puuloa, Ewa, Oahu, Tax Map Key: (1) 9-1-007:seaward of 052 & 064.

APPLICANT:

Brain W. Vinson, married, tenant in severalty, Honolulu, Hawaii 96819.

LEGAL REFERENCE:

Section 171-13 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward Puuloa, Ewa, Oahu, identified by Tax Map
Key: (1) 9-1-007:seaward of 052 & 064, as shown on the attached map labeled Exhibit A.

AREA:

277 square feet (parcel 52) and 210 square feet (parcel 64), more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Office of Conservation and Coastal Lands (OCCL) staff observed the subject seawall and determined it appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Ch. 343.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

During a shoreline certification process, the subject seawall was found encroaching on State lands. A copy of the survey showing the encroachment is attached as Exhibit B. During the review stage, OCCL noted that the building permits issued in 1962 and 1964 indicating that the houses and foundation were legally built, and the subject seawall appears to be an integral part of the structure.

OCCL does not consider the subject encroachment is a Conservation District violation and supports a disposition for the subject encroachment. A copy of OCCL's letter is attached as Exhibit C. Further, OCCL also suggests proper signage be placed on the subject location indicating the seawall is open to the public. Staff notes that it is a standard condition in a shoreline encroachment easement that the public shall have access over such easement area. Another comment from OCCL recommending "... if improvements are allowed ... a requirement for an integrated public access component to address the mandated lateral shoreline access parameters stated in HRS §115." The easement condition does not allow any improvement other than the existing being placed on the easement area.

Department of Facility Maintenance, Department of Planning and Permitting, Department of Parks and Recreation, Board of Water Supply, Department of Hawaiian Home Lands, and Division of Aquatic Resources have no comments/objections to the request. State Historic Preservation Division and Office of Hawaiian Affairs have not responded as of the suspense date.

Subject to the Board approval of the subject request, two separate easements will be issued relating to the abutting lots. Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending a fine of \$1,000 for each of the subject encroachments is over 100 square feet.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There are no other pertinent issues or concerns, and staff has no objection to the request.

RECOMMENDATION: That the Board:

1. Impose a \$2,000 fine for illegal encroachment, under Section 171-6(12).
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 9-1-007:052 & 064 (as appropriate), provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of two (2) term, non-exclusive easements to Brian W. Vinson covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further

subject to the following:

- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 9-1-007:052 & 064 (as appropriate), provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,

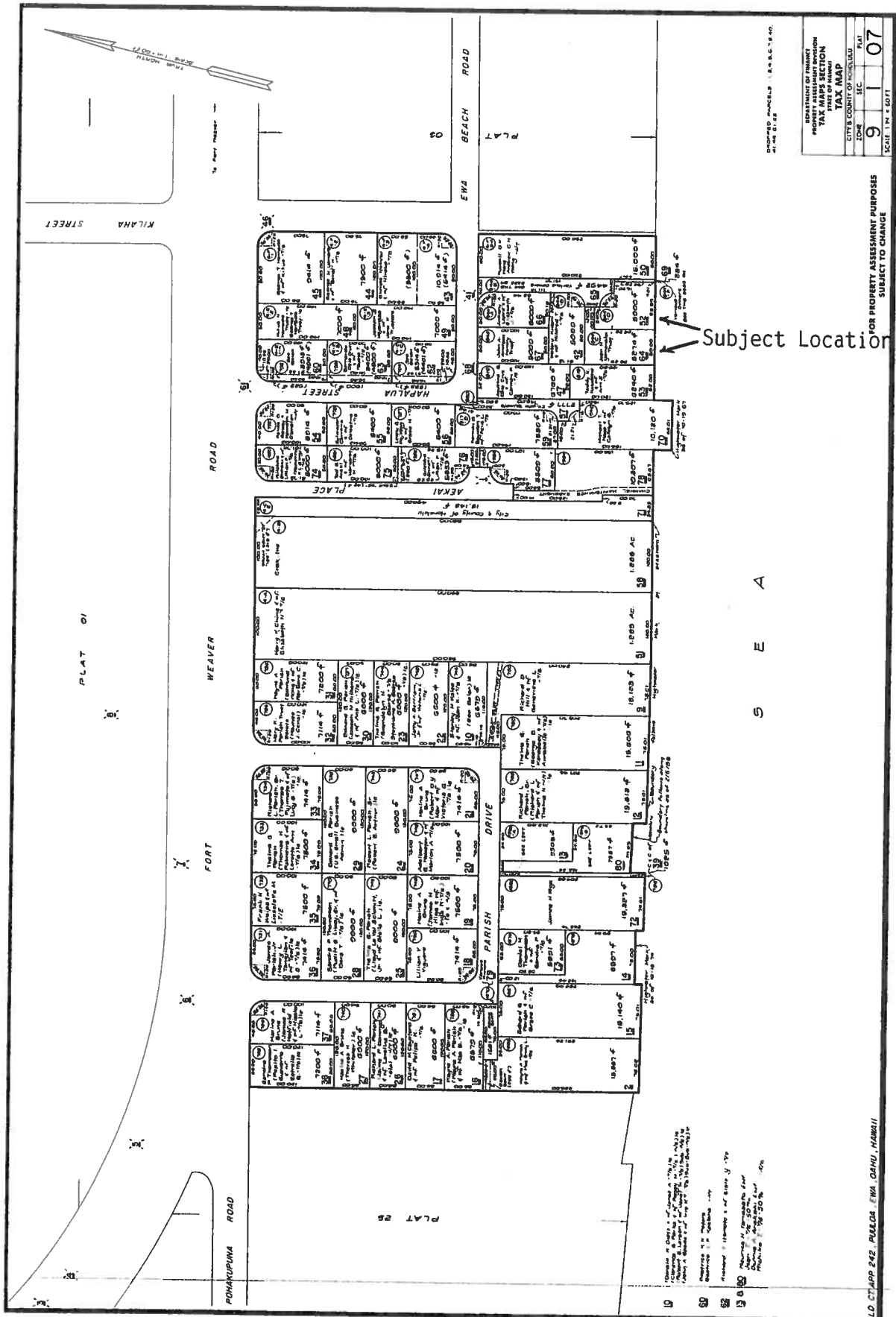


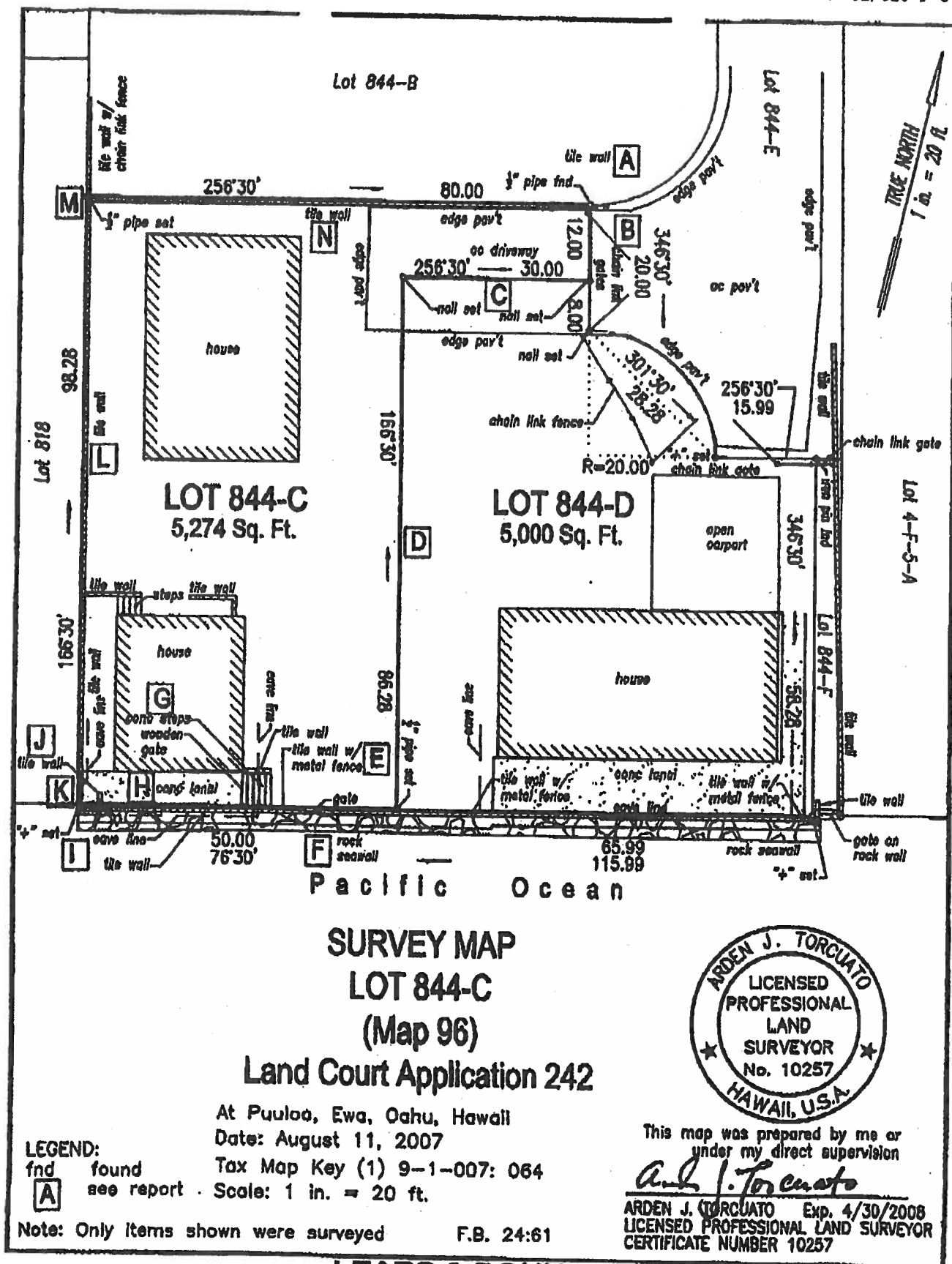
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





91-513 C Hapalua St., Ewa Beach

LEAPS & BOUNDARIES, INC.
 89-890 IWAENA ST., SUITE 104 PH. (808) 484-5701
 AIEA, HI 96701 FAX (808) 484-5701

8 1/2" x 11"

EXHIBIT "B"

LINDA LINGLE
GOVERNOR OF HAWAII



RECEIVED
LAND DIVISION

2009 NOV -2 P 3:17



STATE OF HAWAII
DEPT. OF LAND & NATURAL RESOURCES
DEPARTMENT OF LAND AND NATURAL RESOURCES
BUREAU OF Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:DLNR:CC

NOV - 2 2009

File Number Encroachment: OA-10-002

Mr. Brian W. Vinson

Dear Mr. Vinson,

SUBJECT: Request to Resolve State Land Encroachment at 91-513 Hapalua St,
Ewa Beach, Hawaii, TMK (1) 1-9-007:052 & 064, owner Brian Vinson
9-1

This is in response to your September 2009 request to resolve the shoreline encroachments
at Tax Map Key (1) 1-9-007:052 & 064.
9-1

According to information and maps contained with your request, you have identified
approximately 210 square feet of encroachment (seawall) makai of the subject property
onto State land.

OCCL staff was unable to locate any construction permit or other land use authorization
permits at the State for the subject improvements, and none directly authorizing
construction of a seawall were provided by the applicant. After review of historic aerial
photographs of the region (1961, 1967, 1975, 1996, and 2004), clear evidence of the
structure is not present until after 1975. However, the applicant did provide a permit and
subdivision record for the parcel, indicating that the house and slab were legally built, and
the wall does appear to be an integral part of the larger structure.

As a consequence, DLNR cannot prove the encroachment is a Conservation District
violation and will not be asking for an after-the-fact Conservation District Use Application
to cure this matter. Should the OCCL find that the wall was built without a permit, within
the Conservation District after 1964, the OCCL may reconsider this finding.

The Board of Land and Natural Resource (BLNR) established a policy to allow the
disposition of shoreline encroachments by either removal or issuance of an easement. In
carrying-out this policy, the Department established criteria to guide decision-making over
specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;

EXHIBIT "C"

2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted.

Surrounding Land Uses:

The surrounding coastal uses are residential. This area is at Ewa Beach, near the middle of the developed Ewa coastline. There are numerous shoreline hardening structures in the region, as well as various drainage structures.

Beach Resources:

The beach resource in this area is moderate. Though there is a sandy beach, it is awash at higher tides and during south swell events. The beach is narrow fronting several of the more makai shoreline hardening structures.

Public Access:

The shoreline has good public access. There are dedicated public shoreline accesses in the area, with an access within several parcels and a beach park with 0.8 miles. Lateral coastal access is excellent at lower tides.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the seawall will provide a minor improvement to the beach resources in the area. Removal of the structure will allow the shoreline to migrate mauka and release sediment stored in the coastal plain, beneath and between the two shoreline homes.

Public Access: OCCL staff has determined that public access would only have a slight improvement from removal of the encroaching seawall. Access would be improved between the two shoreline homes.

Affect on Adjacent Properties: Removal of the seawall would likely lead to the loss of both shoreline homes, as the shoreline would almost certainly migrate beneath both foundations.

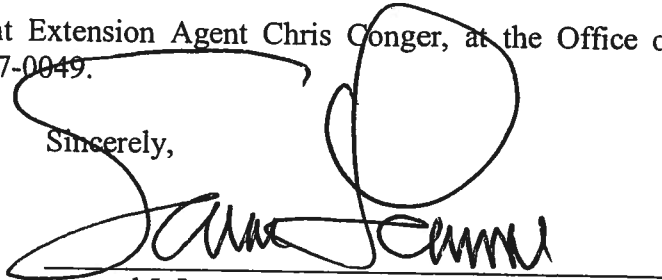
It has been a general policy and practice of the OCCL to support easement requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

Upon review and careful consideration of the information gathered on this case, staff has determined that the requirements stated in HRS § 205A, HRS § 183C, and in the OCCL's evaluation criteria would support a disposition request being processed for the

encroachment. The OCCL suggests that proper signage be placed identifying that the seawall is open to the public. The OCCL suggests that any disposition require the land uses remain unimproved. However, if improvements are allowed the OCCL also suggests a requirement for an integrated public access component to address the mandated lateral shoreline access parameters stated in HRS § 115.

Please feel free to contact Sea Grant Extension Agent Chris Conger, at the Office of Conservation and Coastal Lands at 587-0049.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', written over a horizontal line.

Samuel J. Lemmo, ADMINISTRATOR
Office of Conservation and Coastal Lands

cc: Land Division